

July 25, 2006

Sean F. Byrnes, Esq.
52 Reckless Place
Red bank, NJ 07701

Re: In the Matter of the Application for Certification of Ellen Muench
Docket No. 0405-179

Dear Mr. Byrnes:

At its meeting of June 8, 2006, the State Board of Examiners considered the remand of Ellen Muench's appeal challenging the Board of Examiners' determination that her appeal was untimely. After reviewing your documentation, at its July 20, 2006 meeting, the Board of Examiners voted to deny your client's appeal because you did not demonstrate that she satisfied the regulatory prerequisites for requesting an additional provisional year.

As you know, your client, Ellen Muench, was enrolled in the Provisional Teacher Program (PTP) and received two consecutive "insufficient" ratings. A candidate who receives two "insufficients" or one "disapproved" rating in the PTP may not receive a standard teaching certificate. *N.J.A.C. 6A:9-8.7*. The individual, however, may petition the Board of Examiners for approval to seek another provisional year in a different district. *N.J.A.C. 6A:9-17.18*. In the alternative, the applicant can challenge the rating he or she received. *N.J.A.C. 6A:9-17.18*.

On November 24, 2004, Ms. Muench appealed from her second insufficient rating. The Board of Examiners determined that her appeal was untimely because even if she had received notice of the insufficient rating no later than the end of the school year on June 30, 2004, her appeal was due "within 60 days of receipt of the final evaluation and certification recommendation." *N.J.A.C. 6A:9-17.18(a)1*. Ms. Muench appealed from the Board of Examiners' decision to the Commissioner, who transmitted the case to the Office of Administrative Law for hearing. *Muench v. State Board of Examiners*, Dkt. No. EDU 02754-05S (Initial Decision, February 28, 2006). Administrative Law Judge (ALJ) Jeff Masin held that Muench had knowledge of the appeal regulations and did not show good cause for filing an untimely appeal. (Initial Decision, slip op. at 5).

Accordingly, he dismissed her appeal. (Initial Decision, slip op. at 5). In the Commissioner of Education's decision, she agreed with the ALJ on this issue and affirmed the ALJ's determination that Muench "did not show good cause to waive the 60-day limitation period under *N.J.A.C.* 6A:9-17.18(a)." *Muench v. State Board of Examiners*, Dkt. No. 61-2/05 (Commissioner's Decision, April 12, 2006, slip op. at 6). However, the Commissioner remanded the matter to the Board of Examiners for a determination as to the applicability of *N.J.A.C.* 6A:9-17.18(d), which allows candidates who have not challenged their approval rating under *N.J.A.C.* 6A:9-17.18(a) to seek approval from the Board of Examiners for an additional provisional year. (Commissioner's Decision, slip op. at 6-7).

The Board of Examiners considered the remand at its June 8, 2006 meeting. After consideration of the complete record, at its July 20, 2006 meeting, the Board voted to deny your client's appeal. The Board noted that the two appeal provisions of *N.J.A.C.* 6A:9-17.18 (a) and (d) are mutually exclusive. In fact, 6A:9-17.18(d), specifically states, in relevant part: "Candidates who receive a recommendation of 'disapproved' or two recommendations of 'insufficient,' *and who do not contest the certification recommendation pursuant to (a) above* may petition the Board of Examiners for approval of an additional opportunity to seek provisional employment." (Emphasis added.) Your client chose to appeal her second insufficient rating in the PTP program under 6A:9-17.18(a) and the reviewable issues of her appeal were fully litigated and decided. Accordingly, the provisions of 6A:9-17.18(d) are unavailable to her. The fact that she may have included language citing both provisions in her initial letter of appeal does not alter the clear language of the regulation which provides appellants with alternative remedies, not supplementary ones. If Ms. Muench was seeking different relief, she should have informed the Board of Examiners of her choice prior to its initial review of her case. Her appeal is therefore dismissed in its entirety.

Sincerely,

Robert R. Higgins, Acting Secretary
State Board of Examiners

RRH/MZ/muench-deny appeal

By certified and regular mail

Date of mailing: JULY 25, 2006

This matter may be appealed to the Commissioner of Education pursuant to *N.J.A.C.* 6A:3-1 et seq.